

(2011) 12 KAR CK 0268

In the Karnataka High Court

Case No : Criminal Revision Petition No. 169 of 2010

M/s. Bahubali Interiors and Rabricators

APPELLANT

Vs

Mohammed Imtiyaz. Proprietor of M/s. National Sanitation,
No 20/1, SJP Road, Near Masjid, City Market, Bangalore
560002

RESPONDENT

Date of Decision : 05-12-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Negotiable Instruments Act, 1881 (NI) — Section 138, 139

Citation : (2011) 12 KAR CK 0268

Hon'ble Judges : A.S. Pachhapure, J

Bench : Single Bench

Advocate : V. Suresh, for M/s. S.A. Associates, for the Appellant; S. Vasanth Madhav, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Pachhapure

1. The petitioner has challenged the judgment and order of acquittal passed by the First Appellate Court setting aside the conviction ordered by the Additional Chief Metropolitan Magistrate, Bangalore City.
2. The petitioner herein is the complainant whereas the respondent is the accused before the Trial Court.
3. The facts reveal that the complainant is a firm and the accused used to purchase goods from the complainant on credit basis and an amount of Rs. 2,94,470/- is said to have been due from the accused. Towards the payment of the said dues, the accused is said to have issued a cheque dated 13-10-2007 for the aforesaid amount and when the said cheque was presented for encashment, it returned with an endorsement as account closed. The complainant issued a notice. There was no reply. Hence, a complaint came to be lodged by the

petitioner before the Trial Court to initiate action against the accused for the offence u/s 138 of the Negotiable Instruments Act (hereinafter called as "the Act" for short).

During the trial, the complainant was examined as PW. 1 and the documents Exs. P. 1 to P.9 were admitted in evidence. The statement of the accused was recorded u/s 313 Cr.P.C. He is examined as DW.1. The Trial Court after hearing the parties and on appreciation of the material on record convicted the accused and sentenced him to pay a fine of Rs. 3,50,000/-, in default, to undergo simple imprisonment for six months. The order of conviction and sentence was challenged in appeal before the First Appellate court in CrI. A. No. 1290/2007. The said appeal came to be allowed setting aside the conviction and the sentence. Hence, the complainant has approached this Court in revision against the said order.

4. I have heard the learned counsel for both the parties.

5. The learned counsel for the petitioner has relied upon the decisions of this Court reported in L. Mohan Vs. V. Mohan Naidu, wherein it has been held as under:

When once the issue of cheque and the signature of it is admitted. Court has to presume that the cheque has been issued for discharging the debt or liability. The burden of proof shifts on the accused to prove that there was no liability/debt or that the cheque was issued to a different person.

6. He has also relied upon the decision reported in 2001 AIR - Kant. H.C.R. 2154 M/s. Dari Tyres Vs. Nawab Jan wherein it has been held as under:

Criminal Court cannot embark upon any enquiry that goes behind act of issuance of cheque-If cheque was alleged to be issued for some special reasons and it was not intended to be enacted or honoured - Onus of establishing the same shifts squarely to accused.

7. So relying upon the decisions referred to supra, it is the contention of the learned counsel that the cheque has been signed by the accused and therefore, a presumption arises u/s 139 of the Act and when the respondent has not adduced any such evidence to rebut the presumption and therefore, he claims that the First Appellate Court committed an error in allowing the appeal of the respondent. As could be seen from the cheque Ex.P. 1 dated 13-02-2007, it appears that the respondent has put the signature on the cheque and also it reveals that the name of the drawee is also written by the accused, but the space meant for the amount to be mentioned was kept blank. The ink used for writing the name of the complainant and the signature is different from the ink used for writing the amount on cheque. In this context, if the defense of the accused is considered, it is his contention that this blank cheque was given to the complainant as a security at the time of commencement of the business and that the said cheque has been misused by the complainant by filling in the blanks. It

is also his contention that the complainant has not produced any accounts or any documents to show that an amount of Rs. 2,94.470/- was due on the date when the complaint came to be lodged. On this aspect of the matter. If the evidence of PW. 1 is looked into, the complainant has not produced any documents to establish that the sum mentioned in the cheque was due as on the date. Furthermore, in the cross examination, PW. 1 categorically admits that Ex.P. 1 was a blank cheque and the accused gave the said cheque as a security to the complainant. So, the complainant has given a go-by to his case by the admission that the cheque was for the purpose of security. Now, as could be seen from the provisions of Section 138 of the Act, it reads as under:

138. Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in pan, of any debt or other liability, is returned by the bank unpaid.....

8. So, under the aforesaid provisions, a cheque has to be drawn on an account maintained by a person for payment of the amount to another person. A cheque which has been given as a security at the time of commencement is not a cheque and is not given for payment of the money to another person and therefore, it does not fall within the purview of Section 138 of the Act. A cheque which has been given as a security, even if it is bounced, cannot attract the provisions of Section 138 of the Act. So, if this aspect of the matter is taken into consideration, I do not think that the First Appellate Court committed an error or illegality in allowing the appeal and setting aside the order of conviction. In that view of the matter, I proceed to pass the following:

ORDER

The revision petition is dismissed.